

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARRHOD STEVEN WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

October 14, 2010

No. 292909

Wayne Circuit Court

LC No. 07-011179-FC

Before: FORT HOOD, P.J., and JANSEN and WHITBECK, JJ.

PER CURIAM.

Defendant Jarrhod Williams appeals his jury convictions of two counts of first-degree premeditated murder<sup>1</sup> and possession of a firearm during the commission of a felony (felony-firearm).<sup>2</sup> The trial court sentenced Williams to concurrent terms of life in prison for each murder conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction. We affirm.

**I. BASIC FACTS**

**A. OVERVIEW**

Williams' convictions arise from the shooting deaths of D'Anglo Savage and Tommy Haney while they were sitting in a parked vehicle on Wetherby Street in Detroit. Two days before the Wetherby shootings, Williams' two cousins had been shot and killed on Floyd Street in Detroit. Believing that Savage killed or knew who killed his cousins, Williams approached Savage's vehicle and fired AK-47 assault rifle rounds into the vehicle. Later that same night, Williams' brother was shot and killed at a Residence Inn.

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<sup>1</sup> MCL 750.316(1)(a).

<sup>2</sup> MCL 750.227b(1).

## B. WILLIAMS' CONFESSION

After police arrested Williams, he was taken into custody where Sergeant Kenneth Gardner of the Detroit Police Department-Homicide Section questioned him. Williams eventually confessed to shooting Savage with an AK-47 assault rifle to get revenge for his cousins' deaths. In his confession, Williams stated that he began shooting into Savage's vehicle when he saw Savage jump into the back seat of the vehicle, presumably to reach for a weapon. No weapon was ever found inside Savage's vehicle.

At trial, the prosecutor argued that Williams voluntarily, knowingly, and intelligently made statements to Sergeant Gardner that contained written, signed, and initialed waivers of the right to counsel. Williams' attorney argued that Sergeant Gardner obtained Williams' confession by leading Williams to believe that he acted in self-defense and by promising Williams that he would be released from custody if he signed the statement. The trial court ruled that Williams' confession was voluntary and that he made it knowingly and intelligently.

## C. POLICE INVESTIGATION

The police investigation found that Williams' clothing tested positive for gunshot residue. The police recovered 42 shell casings from the crime scene. The police also recovered an AK-47 assault rifle from the bushes outside the Residence Inn where Williams had been immediately before his arrest. Ballistics testing indicated that the 42 shell casings were fired from two different weapons, both of which were consistent with a high-velocity AK-47 assault rifle. However, it was later determined that the casings the police retrieved from the crime scene were not from the assault rifle that the police found at the Residence Inn.

At trial, the prosecutor argued that the Wetherby Street, Floyd Street, and Residence Inn shootings were related and that Williams and an unknown accomplice committed the Wetherby Street shootings to get revenge for the deaths of Williams' cousins. The prosecutor argued that the unknown accomplice was probably Williams' brother who drove Williams to Wetherby Street. The prosecutor suggested that Williams and his brother arrived at the Residence Inn sometime after the Wetherby Street shootings and that Williams threw down his AK-47 somewhere in the hotel room. According to the prosecutor, later, after some heated words with a man named John Cistrunk ("Fuji"), Fuji shot Williams' brother and then grabbed the AK-47 that Williams had used in the Wetherby Street shootings and ran away. Williams also grabbed an AK-47 and left the hotel room. Another hotel guest who heard the shooting saw Williams run from the room. The next morning, another hotel guest found Williams' AK-47 assault rifle in the bushes at the Residence Inn.

Williams' attorney argued that the AK-47 assault rifle found at the Residence Inn was not the murder weapon and therefore could not be entered into evidence because its prejudicial effect on the jury outweighed its probative value. In response, the prosecutor argued that, although the assault rifle from the Residence Inn was not directly linked to the Wetherby Street shooting, it should be admitted into evidence because the police compared it to the 42 bullet casings found on Wetherby Street during their investigation and because it was in Williams' possession just before his arrest. The trial court ruled that the assault rifle was admissible.

As stated, the jury convicted Williams of first-degree premeditated murder and felony-firearm. Williams now appeals.

## II. ADMISSIBILITY OF WILLIAMS' STATEMENTS

### A. STANDARD OF REVIEW

Williams argues that the trial court erred in denying his motion to suppress his police statements. When reviewing whether there was a valid waiver of the right against self-incrimination, and whether the trial court properly admitted a confession, an appellate court conducts a de novo review of the entire record.<sup>3</sup> However, an appellate court will not disturb a trial court's factual findings regarding a defendant's knowing and intelligent waiver of *Miranda* rights "unless that ruling is found to be clearly erroneous."<sup>4</sup>

### B. LEGAL STANDARDS

When a defendant challenges the admissibility of a confession, the prosecution must prove by a preponderance of the evidence that there was a valid waiver of the right against self-incrimination.<sup>5</sup> A valid waiver must be voluntary, and knowing and intelligent.<sup>6</sup> This is a bifurcated inquiry to be determined by the totality of the circumstances.<sup>7</sup> A waiver is voluntary if it is the product of a free and deliberate choice rather than police intimidation, coercion, or deception.<sup>8</sup>

### C. APPLYING THE STANDARDS

In this case, the record does not support Williams' claims that the police improperly obtained his statements. Although Williams asserts that he asked Sergeant Gardner for an attorney, his statements contain written, signed, and initialed waivers of the right to counsel.

At trial, Williams testified that he signed the statements because Sergeant Gardner told him that a gun was found in Savage's vehicle, that Williams acted in self-defense, and that Williams would be released if he signed the statements. The trial court found that Williams' testimony was not credible. We defer to the trial court's credibility determinations.<sup>9</sup>

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<sup>3</sup> *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000).

<sup>4</sup> *Id.* at 629 (quotations and citations omitted).

<sup>5</sup> *Id.* at 634.

<sup>6</sup> *Id.* at 633, 639.

<sup>7</sup> *Id.* at 633-634, 639.

<sup>8</sup> *Id.* at 635, 637.

<sup>9</sup> *Id.* at 629.

Furthermore, the contents of Williams' statements belie his claims. The statements do not contain any references to Sergeant Gardner's alleged representations. In addition, Williams placed his signature and initials next to a statement indicating that no promises were made to him and that he waived his rights voluntarily. Williams also claimed that he did not read the statements before signing them, but he wrote "yes" next to a question asking whether he went over his statement, and he placed both his signature and initials next to that answer. However, the statements contain corrections and information that could only have come from Williams, as well as a written apology that Williams admitted writing. In light of the totality of the circumstances, we conclude that the trial court did not clearly err in finding that Williams' testimony regarding the circumstances surrounding his statements was not credible and that he gave the statements voluntarily.

Williams also suggests that his lack of education and intelligence level prevented him from knowingly and intelligently waiving his right against self-incrimination. Whether a waiver was knowingly and intelligently made involves an objective examination of the circumstances surrounding the waiver as well as a partially subjective inquiry, irrespective of police conduct, into the defendant's basic level of understanding of the right against self-incrimination.<sup>10</sup> This inquiry does not consider the defendant's motivation, wisdom, or foresight.<sup>11</sup> Although Williams' intelligence and education were matters addressed at trial, they were not addressed at the *Walker*<sup>12</sup> hearing, and Williams never claimed that he did not understand his rights. The record provides no basis for concluding that Williams did not make his waiver knowingly and intelligently. Accordingly, we conclude that the trial court did not err in denying Williams' motion to suppress his statements to the police.

### III. ADMISSIBILITY OF THE AK-47 ASSAULT RIFLE

#### A. STANDARD OF REVIEW

Williams argues that the trial court erred in admitting into evidence an AK-47 assault rifle that was not directly linked to the charged offense. Williams argues that the evidence was irrelevant and unduly prejudicial. We review a trial court's decision to admit or exclude evidence for an abuse of discretion.<sup>13</sup>

#### B. LEGAL STANDARDS

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be

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<sup>10</sup> *Id.* at 634 n 10, 636-639, 642-645.

<sup>11</sup> *Id.* at 636-639, 642-645.

<sup>12</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

<sup>13</sup> *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998).

without the evidence.”<sup>14</sup> Even if relevant, a trial court may exclude evidence if its unfair prejudicial effect substantially outweighs its probative value.<sup>15</sup> Unfair prejudice exists when there is a tendency that the jury will give the evidence undue or preemptive weight, or when it would be inequitable to allow use of the evidence.<sup>16</sup>

### C. APPLYING THE STANDARDS

The AK-47 assault rifle that the police recovered from the bushes at the scene of the Residence Inn shooting is at issue here. The assault rifle had some relevance to this case because it was in Williams’ possession just before his arrest, and the police examined it to determine whether it fired any of the 42 shell casings that were found at the scene of the Wetherby Street shooting. While the recovered AK-47 assault rifle may have had only minimal probative value at trial, it had been discussed for four days during trial, Williams had admitted possessing the weapon at the hotel after the Wetherby shooting, and the judge clearly informed the jury that it was not one of the weapons used in the Wetherby Street shooting. Accordingly, there was little potential for unfair prejudice. On balance, we conclude that the danger of unfair prejudice did not outweigh the probative value of the weapon.

## IV. MANSLAUGHTER INSTRUCTION

### A. STANDARD OF REVIEW

Williams argues that the trial court erred by denying his request for a jury instruction on the lesser offense of voluntary manslaughter. We review de novo claims of instructional error.<sup>17</sup> When reviewing a trial court’s failure to give a requested instruction, this Court reviews the record to determine whether there was evidence to support the requested instruction.<sup>18</sup> “[A] requested instruction on a necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it.”<sup>19</sup> To warrant reversal, a “defendant must show that it is more probable than not that the trial court’s failure to give the requested instruction undermined the reliability of the verdict.”<sup>20</sup>

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<sup>14</sup> MRE 401.

<sup>15</sup> MRE 403.

<sup>16</sup> *People v McGuffey*, 251 Mich App 155, 163; 649 NW2d 801 (2002).

<sup>17</sup> *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002).

<sup>18</sup> *People v Hendricks*, 446 Mich 435, 442; 521 NW2d 546 (1994).

<sup>19</sup> *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002).

<sup>20</sup> *People v Lowery*, 258 Mich App 167, 172-173; 673 NW2d 107 (2003).

## B. LEGAL STANDARDS

The trial court has a duty to instruct the jury with respect to the law applicable to the case.<sup>21</sup> This duty depends on the evidence presented at trial. A trial court must give a defendant charged with murder instructions for voluntary and involuntary manslaughter if a rational view of the evidence supports such instructions.<sup>22</sup> If the evidence would support a conviction of manslaughter, the trial court, if the defendant requests it, must instruct on it.<sup>23</sup>

Voluntary manslaughter is an intentional killing committed in the heat of passion, caused by adequate provocation.<sup>24</sup> To prove voluntary manslaughter, the prosecution must establish that: (1) the defendant killed in the heat of passion; (2) the passion was caused by adequate provocation; and (3) there was no lapse of time during which a reasonable person could have controlled his passions.<sup>25</sup> The degree of provocation required to mitigate a killing from murder to manslaughter “is that which causes the defendant to act out of passion rather than reason.”<sup>26</sup> In order for the provocation to be adequate it must be “that which would cause a reasonable person to lose control.”<sup>27</sup>

## C. APPLYING THE STANDARDS

Here, when the trial judge gave the jury instructions, he gave instructions for first-degree premeditated murder<sup>28</sup> and felony-firearm.<sup>29</sup> The trial judge did not give instructions for either voluntary or involuntary manslaughter. The jury subsequently convicted Williams.

Although Williams now argues that the shooting of his cousins two days earlier was adequate provocation to support a manslaughter instruction, the shooting of his cousins was not the basis for Williams’ argument at trial. At trial, Williams argued that the provocation to support a manslaughter instruction was Savage “rising up with a weapon.”

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<sup>21</sup> MCL 768.29.

<sup>22</sup> *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003).

<sup>23</sup> *Id.* at 548.

<sup>24</sup> *Mendoza*, 468 Mich at 535-536.

<sup>25</sup> *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998), *aff’d* by equal division 461 Mich 992 (2000).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* (emphasis omitted).

<sup>28</sup> MCL 750.316(1)(a).

<sup>29</sup> MCL 750.227b(1).

Regardless, because the prior shooting occurred two days earlier, providing ample time for a reasonable cooling-off period, a rational view of the evidence did not support a finding that Williams acted in the heat of passion.<sup>30</sup> Therefore, we conclude that the trial court did not err in denying Williams' request for an instruction on voluntary manslaughter.

## V. DEFENDANT'S STANDARD 4 BRIEF

Williams raises several additional issues in a pro se supplemental brief, filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4, none of which have merit.

### A. SUFFICIENCY OF THE EVIDENCE

#### 1. STANDARD OF REVIEW

The sole basis for Williams' argument is that his confession should not have been considered because it was not corroborated by independent evidence and was unworthy of belief. Williams claims that the evidence was insufficient to support his convictions.

We review the sufficiency of the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find every element of the crimes charged proven beyond a reasonable doubt.<sup>31</sup>

#### 2. CORPUS DELICTI RULE

In Michigan, the corpus delicti rule provides that "proof of the corpus delicti is required before the prosecution is allowed to introduce the inculpatory statements of an accused."<sup>32</sup> Contrary to Williams' argument, however, there is no requirement for the prosecutor to introduce physical evidence to corroborate each aspect of his confession. Rather, the evidence sufficient to show that a death occurred and that the death resulted from a criminal agency satisfies the corpus delicti of murder.<sup>33</sup> Here, there was independent evidence that two persons were killed by multiple gunshots. Therefore, Williams' confession was admissible to prove the identity of the perpetrator and the degree of culpability.<sup>34</sup> The alleged lack of corroborating evidence affects

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<sup>30</sup> See *People v Tierney*, 266 Mich App 687, 716; 703 NW2d 204 (2005), and *People v Wofford*, 196 Mich App 275, 280; 492 NW2d 747 (1992).

<sup>31</sup> *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985).

<sup>32</sup> *People v McMahan*, 451 Mich 543, 548; 548 NW2d 199 (1996).

<sup>33</sup> See *People v Hughey*, 186 Mich App 585, 589; 464 NW2d 914 (1990).

<sup>34</sup> *People v Konrad*, 449 Mich 263, 269-270; 536 NW2d 517 (1995); *People v King*, 271 Mich App 235, 241-242; 721 NW2d 271 (2006).

only the weight and credibility of Williams' confession, which are matters for the jury to resolve.<sup>35</sup>

### 3. ADDITIONAL EVIDENCE

A defendant may not challenge the sufficiency of the evidence at trial if the defendant received a fair trial and was not otherwise prejudiced by the error.<sup>36</sup> Williams admitted that he sought out and confronted Savage with an AK-47 because he believed that Savage killed or knew who killed Williams' cousins two days earlier. Williams also admitted that he began shooting inside Savage's vehicle because he thought Savage had reached for a gun. (As previously stated, the police never found a gun in Savage's vehicle). Further, ballistics tests indicated that multiple gunshots fired from a high velocity weapon consistent with an AK-47 assault rifle killed both victims. Therefore, when viewed in a light most favorable to the prosecution, we conclude that the evidence was sufficient to enable a rational jury to find beyond a reasonable doubt that Williams killed the victims with premeditation and deliberation, and that he possessed a firearm during the commission of the offense.<sup>37</sup>

### B. INEFFECTIVE ASSISTANCE OF COUNSEL

#### 1. STANDARD OF REVIEW

Williams argues that defense counsel's various errors deprived him of the effective assistance of counsel. Because Williams did not raise this issue in a motion for a new trial or request for an evidentiary hearing in the trial court, our review is limited to mistakes apparent from the record.<sup>38</sup>

#### 2. LEGAL STANDARDS

To establish ineffective assistance of counsel, Williams must show that counsel's performance was deficient and that, under an objective standard of reasonableness, counsel made an error so serious that he was not performing as the attorney guaranteed by the constitution.<sup>39</sup> Williams must overcome the presumption that the challenged conduct might be sound trial strategy and must further show that the error in question prejudiced him.<sup>40</sup> To establish

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<sup>35</sup> *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

<sup>36</sup> *People v Matuszak*, 263 Mich App 42, 50-51; 687 NW2d 342 (2004).

<sup>37</sup> See *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999); *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

<sup>38</sup> *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994); see also *People v Ginther*, 390 Mich 436, 442-444; 212 NW2d 922 (1973).

<sup>39</sup> *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

<sup>40</sup> *Id.* at 312, 314.



prejudice, Williams must show that there is a reasonable probability that the alleged error made a difference in the outcome of the trial.<sup>41</sup>

### 3. BALLISTICS EVIDENCE

Williams argues that defense counsel was ineffective for failing to object to his bindover on the grounds that it was based on falsified ballistics evidence from the Detroit Police Department Crime Lab. The initial police report indicated that all bullet casings from the crime scene came from a single weapon. Subsequent testing showed that the bullet casings actually came from two different AK-47 assault rifles. At trial, expert testimony suggested that the discrepancy occurred because the original Detroit Crime Lab examiners either lied, or were incompetent, or did not actually examine all 42 casings.<sup>42</sup> However, the record discloses that no ballistics evidence was presented at Williams' preliminary examination. Moreover, Williams' challenge to the bindover is moot as he was ultimately convicted beyond a reasonable doubt of first-degree murder and felony-firearm. Williams has failed to demonstrate any prejudice from the bindover decision or that the trial court denied him a fair trial. We conclude that defense counsel did not err in failing to make a futile objection.<sup>43</sup>

### 4. PLEA OFFERS

Williams argues that defense counsel was ineffective for misrepresenting or failing to convey various plea offers to Williams. There is no record support for Williams' claim that the prosecutor ever offered to allow Williams to plead guilty to only a two-year offense, or that defense counsel failed to convey any plea offers to Williams. The record does indicate that Williams was allowed to plead *nolo contendere* to second-degree murder and felony-firearm, which included a sentence agreement of 10 to 30 years' imprisonment for the murder conviction and two years' imprisonment for the felony-firearm conviction. However, Williams decided to withdraw his plea and proceed to trial based on a strategy of attacking the Detroit Police Department's investigation. The fact that this strategy did not work does not prove that counsel was inefficient.<sup>44</sup>

### 5. FAILURE TO OBJECT TO PROSECUTOR'S EVIDENCE

Williams argues that defense counsel was ineffective for failing to object to the evidence of the Floyd Street and Residence Inn shootings. The decision whether to object to evidence is a matter of trial strategy.<sup>45</sup> In this case, the general facts of the Floyd Street shooting and the

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<sup>41</sup> *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995).

<sup>42</sup> As a result of this and other cases, the Detroit Police Crime Laboratory had since been investigated and closed.

<sup>43</sup> *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

<sup>44</sup> *Matuszak*, 263 Mich App at 61.

<sup>45</sup> *Id.* at 58.

Residence Inn shooting were essential to understanding the events before and after the Wetherby Street shooting that led to Williams' arrest. As all three shootings were related, the Floyd Street and Residence Inn shootings were relevant to show Williams' connection to the charged shooting, and the Floyd Street shooting was also relevant to the issues of Williams' intent and premeditation. Moreover, in Williams' statement to Sergeant Gardner he mentioned both of the other two shootings. In order to understand William's statement, the other two shootings had to be addressed. The prosecutor made it clear that Williams was not being accused of the other two shootings. Because the evidence was relevant and admissible, and not unfairly prejudicial, any objection would have been futile. Defense counsel was not ineffective in failing to make a futile objection.<sup>46</sup>

## 6. FAILURE TO OBJECT DURING CLOSING ARGUMENT

Williams argues that defense counsel was ineffective for failing to disobey the trial court's order not to raise factual objections during the prosecutor's closing argument. "[A]n attorney may not, by speech or by other conduct, resist a ruling of the trial court beyond the point necessary to preserve a claim for appeal."<sup>47</sup> Moreover, as discussed in § V.C., *infra*, the trial court did not abuse its discretion by limiting factual objections during closing arguments.

Further, Williams has not shown that the prosecutor misstated the evidence or engaged in improper argument during her closing argument. During closing argument, the prosecutor asserted that Williams believed Savage was involved in the Floyd Street shooting. Williams' police statement supported this assertion. Also, the prosecutor's use of colorful language, describing the severity of the victims' gunshot wounds as similar to what meat would look like after going through a meat grinder, was not improper.<sup>48</sup>

Additionally, contrary to Williams' argument, the prosecutor did not state that Williams admitted in his police statement that there were two shooters. Rather, during closing argument, the prosecutor accurately stated that Williams admitted that his brother drove him to the scene. The prosecutor reasonably inferred from this and other evidence that Williams' brother was the second shooter. Likewise, the prosecutor also accurately argued that gunshot residue was found on Williams' hands. Contrary to Williams' assertion, the prosecutor did not speculate about the source of the residue. In sum, Williams has failed to show that there was any basis for a meritorious objection to the prosecutor's closing argument. Thus, Williams has not shown that counsel's failure to object was either objectively unreasonable or prejudicial.

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<sup>46</sup> See *Kulpinski*, 243 Mich App at 27.

<sup>47</sup> *Davis v Dow Corning Corp*, 209 Mich App 287, 294; 530 NW2d 178 (1995), quoting *Gentile v State Bar of Nevada*, 501 US 1030, 1072-1073; 111 S Ct 2720; 115 L Ed 2d 888 (1991).

<sup>48</sup> See *People v Marji*, 180 Mich App 525, 538; 447 NW2d 835 (1989).

## C. TRIAL COURT’S “NO OBJECTION” RULING

### 1. STANDARD OF REVIEW

Williams argues that the trial court erred by prohibiting the attorneys from making factual objections during closing arguments. We review a trial court’s ruling concerning the conduct of closing argument for an abuse of discretion.<sup>49</sup> An abuse of discretion occurs only when the trial court’s decision falls outside the range of reasonable and principled outcomes.<sup>50</sup>

### 2. FACTUAL OBJECTIONS DURING CLOSING ARGUMENT

This was a very contentious case marked by numerous objections during trial. The trial court prohibited the parties from making factual objections during the other party’s closing argument presumably to keep closing arguments professional and cohesive, and to avoid interruptions based on disagreements over the evidence. However, the parties were not prevented from making legal objections or from preserving factual objections for appeal by raising them after closing arguments were completed. Under the circumstances, the trial court’s restriction on factual objections was not unreasonable. Thus, the trial court did not abuse its discretion. Further, because Williams has not identified any meritorious objection that his attorney was unable to raise in closing arguments, he cannot establish that the trial court’s ruling prejudiced his case.

## D. ADMISSION OF RECOVERED AK-47 ASSAULT RIFLE INTO EVIDENCE

### 1. STANDARD OF REVIEW

Williams, in his pro se brief, argues that the trial court erred in admitting into evidence an AK-47 assault rifle that was not directly linked to the charged offense. Williams argues that the evidence was irrelevant and unduly prejudicial. We review a trial court’s decision to admit or exclude evidence for an abuse of discretion.<sup>51</sup>

### 2. ANALYSIS

Williams argues that he was denied the right to a fair trial in violation of due process because the trial court allowed an AK-47 assault rifle unrelated to the case to be displayed to the jury over defense counsel’s objections. As stated above, the prosecutor’s introduction of the recovered AK-47 assault rifle into evidence was relevant and therefore admissible. At trial, Williams testified that he brought an AK-47 to the hotel room and placed it down somewhere. Williams testified that John Cistrunk (“Fuji”) took an AK-47 when he left the Residence Inn

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<sup>49</sup> *People v Lacalamita*, 286 Mich App 467, 472; 780 NW2d 311 (2009).

<sup>50</sup> *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

<sup>51</sup> *Smith*, 456 Mich at 550.

after shooting Williams' brother. Williams also testified that he grabbed another AK-47 when he left after Fuji. Even though the recovered AK-47 was not the same rifle that Williams threw down somewhere when he arrived at the Residence Inn hotel room, Williams' testimony supports the inference that Fuji picked up the murder weapon when he left the Residence Inn hotel room and that Williams picked up an entirely different AK-47 assault rifle when he left the hotel room. Although the recovered assault rifle was not directly linked to the Wetherby Street shootings, there was evidence that it was one of several AK-47s in the Residence Inn hotel room with Williams before he was arrested. Accordingly, we conclude that the prosecutor's introduction of the recovered assault rifle into evidence was not improper and the trial court did not abuse its discretion.

## E. PROSECUTOR'S CONDUCT

### 1. STANDARD OF REVIEW

Williams argues that the prosecutor's conduct denied him a fair trial. This Court generally reviews claims of prosecutorial misconduct on a case-by-case basis, and we review the challenged remarks in context.<sup>52</sup> However, in this case, Williams failed to object to all but one of the alleged instances of misconduct. We review these unpreserved claims for plain error affecting the defendant's substantial rights.<sup>53</sup>

### 2. NO DEPRIVATION OF A FAIR TRIAL

The test for prosecutorial misconduct is whether the defendant was deprived of a fair trial.<sup>54</sup> Williams argues that it was improper for the prosecutor to mention the three uncharged homicides. As previously discussed, the prosecutor's theory at trial was that the charged Wetherby shooting and the uncharged Floyd Street and Residence Inn shootings were all related. Williams' police statement referred to all three shootings. Further, the prosecutor made it clear that Williams was not being accused of the Floyd Street and Residence Inn shootings, but rather used those shootings only to show how they established Williams' connection to the charged shootings in this case. It was not improper for the prosecutor to comment on the other shootings and argue how they related to her theory of the case.<sup>55</sup>

### 3. NO IMPROPER INSINUATIONS

Williams also argues that the prosecutor improperly insinuated that he sold drugs when the prosecutor asked a witness whether she was aware that Williams worked for Taylor, a known

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<sup>52</sup> *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999).

<sup>53</sup> *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

<sup>54</sup> *People v Bahoda*, 448 Mich 261, 266-267 and n 5-7; 531 NW2d 659 (1995).

<sup>55</sup> *Marji*, 180 Mich App at 538.

drug dealer. Although the prosecutor's question improperly assumed facts not in evidence,<sup>56</sup> the trial court sustained defense counsel's objection to the question and immediately instructed the jury that the attorney's questions are not evidence and that there was no evidence that Williams was involved in dealing drugs. The trial court's immediate action and curative instruction was sufficient to protect Williams' right to a fair trial.

#### 4. NO MISSTATEMENT OF THE EVIDENCE

Williams argues that the prosecutor relied on falsified testimony and misstated the facts at various points during her closing argument. As previously discussed, Williams has not shown that the prosecutor misstated the evidence. Furthermore, it was not improper for the prosecutor to argue that the circumstances surrounding Williams' arrest refuted the defense theory that there was a conspiracy within the police department to frame Williams. The prosecutor's argument was responsive to defense counsel's argument and was a proper comment on the evidence and reasonable inferences made during the prosecutor's argument.<sup>57</sup>

#### 5. PASSIONATE LANGUAGE NOT IMPROPER

Williams argues that the prosecutor equated an acquittal with the jury's lack of intelligence. The prosecutor made the challenged comments in the context of addressing evidence that Williams' brother and Taylor were observed talking about revenge for the shooting deaths of Williams' cousins. The prosecutor argued that it was unreasonable to conclude that Williams, who was also present, was not part of that conversation. The prosecutor also commented that none of the jurors were "born yesterday." The argument was an appeal to the jury to use its common sense. The prosecutor's use of passionate language to make her point did not make the argument improper.<sup>58</sup>

We affirm.

/s/ Karen M. Fort Hood  
/s/ Kathleen Jansen  
/s/ William C. Whitbeck

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<sup>56</sup> *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994).

<sup>57</sup> *People v Watson*, 245 Mich App 572, 593; 629 NW2d 411 (2001); *Marji*, 180 Mich App at 538.

<sup>58</sup> *People v Abraham*, 256 Mich App 265, 276-277; 662 NW2d 836 (2003).